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The Appellate Jurisdiction, the Emperor and the City – Republics in Early 13th-Century Northern Italy

Citation for published version:

Raccagni, G 2013, The Appellate Jurisdiction, the Emperor and the City – Republics in Early 13th-Century Northern Italy. in *Law and disputing in the Middle Ages: Proceedings of the 9th Carlsberg Academy Conference on medieval legal history* . Proceedings of the Carlsberg Academy Conference on medieval legal history , DJØF Publishing, pp. 181-200. <<http://www.djoef-forlag.dk/da/boeger/l/law-and-disputing-in-the-middle-ages>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

Published In:

Law and disputing in the Middle Ages

Publisher Rights Statement:

©Raccagni, G. (2013). The Appellate Jurisdiction, the Emperor and the City – Republics in Early 13th-Century Northern Italy. In *Law and disputing in the Middle Ages: Proceedings of the 9th Carlsberg Academy Conference on medieval legal history* . (Proceedings of the Carlsberg Academy Conference on medieval legal history). DJØF Publishing.

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Per Andersen, Kirsi Salonen,
Helle Møller Sigh, and Helle Vogt (eds.)

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Academy Conference
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DJØF Publishing
Copenhagen 2013

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Jurist- og Økonomforbundets Forlag

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Cover: Bo Helsted
Print and Binding: AKAPRINT, Tilst
Printed in Denmark 2013
ISBN 978-87-574-2681-6

Published with support from
Dreyer's Foundation, Stiftamtmand Regensburgs Foundation,
and Knud Højgaards Foundation

Sold and distributed in Scandinavia by:
DJØF Publishing
Copenhagen, Denmark
Email: forlag@djof.dk
www.djof-forlag.dk

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THE APPELLATE JURISDICTION, THE EMPEROR AND THE CITY

REPUBLICS IN EARLY 13TH-CENTURY NORTHERN ITALY

Gianluca Raccagni

1. Introduction

The *appellatio* (that is, the application for redress from the decision of an inferior magistrate to a superior) was a feature of Roman law that was well known in the Italian city republics of the central Middle Ages. At the same time, its obvious hierarchical traits matched particularly well both the representation of imperial rule offered by Roman law and the German emperors' claims of ultimate authority over northern Italy. It was probably not by chance, therefore, that one of the terms of the only settlement that was ever reached between the emperor on one side and city republics taken as a group on the other – that is, the Peace of Constance of 1183 – was specifically devoted to the appellate jurisdiction. The Peace of Constance is generally known for the exceptional autonomy that it granted to the Lombard cities. Yet on that occasion the emperor nevertheless retained the prerogative over the appellate jurisdiction for the most important cases, which were to be examined in the various cities by judges whom he appointed.

While all this makes the appellate jurisdiction potentially a very appealing topic in the study of medieval law and government, scholarship has not devoted much attention to the legacy of the Peace of Constance in this field, and especially not with respect to the first quarter of the 13th century. This probably has something to do with the fact that, in discussing relations between the emperors and the city republics in general, scholars have largely

focused on the reigns of Frederick Barbarossa and his grandson Frederick II. Indeed, these two rulers were both involved in momentous, largely unsuccessful attempts to enhance imperial control over Italy (roughly from 1158 to 1183 for Barbarossa, and from 1226 to 1250 for Frederick II) which were preceded and followed by periods of faltering imperial presence.¹ The Peace of Constance was the outcome of the first of those attempts. Concerning law and government, Barbarossa has also attracted a great deal of attention (including contributions in a previous Carlsberg Academy conference on medieval legal history) because of the involvement of the law professors of Bologna at the Diet of Roncaglia of 1158, where imperial prerogatives in northern Italy were publicly defined.² More generally, Padoa Schioppa's seminal work *Ricerche sull'appello nel diritto intermedio* did not particularly focus on the Peace of Constance and its legacy.³ There is some secondary literature specifically devoted to the imperial claims over the appellate jurisdiction and the working of the imperial appellate judges in the years after the Peace of Constance, but it is more than one hundred years old, examined almost exclusively the last two decades of the 12th century, and focused on specific geographic areas.⁴

1. There is a vast literature on those two emperors, which is listed in their latest biographies: K. Görich, *Friedrich Barbarossa: Eine Biographie* (Munich: 2011); W. Stürner, *Friedrich II., I, Die Königsherrschaft in Sizilien und Deutschland* (Darmstadt: 1992). See also: A. Haverkamp, *Herrschaftsformen der Frühstaufer in Reichsitalien* (Stuttgart: 1970-1971); A. Zorzi, 'La giustizia imperiale nell'Italia comunale', in P. Toubert & A. Paravicini Bagliani (ed.), *Federico II e le città italiane* (Palermo: 1994), 85-103. On law and justice in the Italian city communes in general: M. Vallerani, *La giustizia pubblica medievale* (Bologna: 2005); C. Wickham, *Courts and conflict in twelfth-century Tuscany* (Oxford: 2003); A. Zorzi, 'Diritto e giustizia nelle città dell'Italia comunale (secoli XIII-XIV)', in P. Monnet & O.G. Oexle (ed.), *Stadt und Recht im Mittelalter / La ville et le droit au Moyen Âge* (Göttingen: 2003), 197-214.
2. The secondary literature on Barbarossa and his connection with the law schools has been examined in a previous Carlsberg Academy conference on medieval legal history: M.T. Fögen, 'Learned law and the desire of politics. Barbarossa meets Bulgarus and Martinus', in H. Vogt & M. Münster-Swendsen (ed.), *Law and learning in the Middle Ages*. Proceedings of the Second Carlsberg Academy conference on medieval legal history (Copenhagen: 2005), 29-40, now expanded in M.T. Fögen, 'Römisches Recht und Rombilder im östlichen und westlichen Mittelalter', in B. Schneidemüller & S. Weinfurter (ed.), *Heilig, Römisch, Deutsch: Das Reich im mittelalterlichen Europa* (Dresden: 2006), 57-83. More recently: G. Dilcher & D. Quadiglioni (ed.), *Gli inizi del diritto pubblico, l'età di Federico Barbarossa: legislazione e scienza del diritto-Die Anfänge des öffentlichen Rechts: Gesetzgebung im Zeitalter Friedrich Barbarossas und das Gelehrte Recht* (Bologna & Berlin: 2007); for the time of Frederick II: G. Dilcher & D. Quadiglioni (ed.), *Gli inizi del diritto pubblico europeo, II. Da Federico I a Federico II. Die Anfänge des öffentlichen Rechts, II. Von Friedrich Barbarossa zu Friedrich II* (Bologna & Berlin: 2008).
3. A. Padoa Schioppa, *Ricerche sull'appello nel diritto intermedio*, 2 vols (Milano: 1967-1970).
4. G. Biscaro, 'Gli appelli ai giudici imperiali dalle sentenze dei consoli di giustizia di Milano sotto Federico I ed Enrico VI', *Archivio storico lombardo* 9 (1908): 213-43; J.

The first quarter of the 13th century is largely virgin territory. Nevertheless, it is a particularly interesting period to explore, because it allows consideration of the aftermath of the reign of Barbarossa in the medium term, in a context of relative peace between the emperors and the cities and during a long struggle for the imperial crown that caused turmoil and periods of power vacuum. Scholarship has generally linked that struggle to a decline in imperial rule in Italy and a further growth of the autonomy of the cities, which made the Peace of Constance obsolete and paved the way for the conflicts of the reign of Frederick II. Examination of the appellate jurisdiction will help to test this thesis, because the prerogative over it was probably one of the most tangible residual imperial claims acknowledged by the Peace of Constance.

This paper will consider and compare the legacy of the Peace of Constance in legal works and dispute proceedings from the early 13th century, but, given the limited space available here and the general lack of secondary literature on the topic, this can only be preliminary research. The emphasis on the Peace of Constance will also mean that this paper is mainly relevant for the Po Valley, where the members of the Lombard League were clustered. First the testimony of contemporary legal works will be explored for a survey of views on imperial control over the appellate jurisdiction and the significance of the Peace of Constance. The proceedings of a Paduan dispute from 1211-1212 will then be examined and contextualised. This dispute has been selected because it has not been fully considered before from this point of view; it took place roughly in the middle of the troubles of the first quarter of the 13th century; and it is probably one of the best-documented cases from that period. Yet, above all, the dispute provides unique evidence on several fronts, including general remarks on the activity of imperial appellate judges; the only known attempt from that period to challenge and replace an appellate judge; references to an alleged statute of the Lombard League complementing the terms of the Peace of Constance; and even information regarding the status of the League in a period when no other evidence about it survives. Beyond that, this Paduan dispute shows very well how the hierarchical features of the appellate jurisdiction made it a crossroads between developments and power struggles at the local and regional levels and beyond.

2. From the Diet of Roncaglia to the Peace of Constance

The Diet of Roncaglia of 1158 has attracted a great deal of scholarly attention because on that occasion Barbarossa, with the help of the leading law professors of Bologna, had his prerogatives (*regalia*) over northern Italy identified, thus reviving imperial authority in that area after many decades of steep decline and vacancy. The *regalia* included, among others, the appointment of magistrates who administered justice (*potestas constituendorum magistratuum ad iustitiam expediendam*).⁵ The subsequent history of these claims has not received a comparable level of attention, however, probably because of Barbarossa's short-lived success. The creation in 1167-1168 of the Lombard League, which came to encompass most of the Po Valley, largely wiped out the administrative network that Barbarossa had introduced after Roncaglia.⁶ The League forbade its members from having any contact with the emperor and his agents, and there is even evidence of its rectors taking responsibility for judging appeals brought against the sentences of local magistrates.⁷ At the Peace of Constance of 1183, following Barbarossa's defeat at Legnano in 1176, the emperor granted and recognised most of the *regalia* to the members of the League in perpetuity. This included civil and criminal jurisdiction (*tam in criminalibus quam in pecuniariis*).⁸

The Peace of Constance, however, was a compromise, not a total capitulation. The members of the League, in fact, recognised imperial superiority and a list of residual imperial prerogatives. Among others, the emperor retained the right over the appellate jurisdiction for cases worth more than twenty-five imperial *lire*, while cases under that threshold were left to city officers.⁹ Moreover, the Peace of Constance also required the city consuls to seek imperial investiture for their office and to take an oath of fealty to the emperor.¹⁰

Among the various residual imperial prerogatives, those regarding the investiture of the city magistrates and the appellate jurisdiction were probably the most compelling representations of the ultimate superiority of the emperor. They are also testimony to the endurance of the theoretical framework established in 1158 at the Diet of Roncaglia, demonstrating as they did

5. *Monumenta Germaniae Historica, Constitutiones et acta publica imperatorum et regum* 1, ed. L. Weiland (Hannover: 1894), 245.

6. Haverkamp, *Herrschaftsformen*.

7. G. Raccagni, *The Lombard League* (Oxford: 2010), 103-13.

8. For the latest and more comprehensive edition of the text of the Peace of Constance: E. Falconi, 'La documentazione della Pace di Costanza', in *Studi sulla Pace di Costanza* (Milano: 1984), 21-104; for the passage on the exercise of civil and criminal jurisdiction: 81.

9. Falconi, 'La documentazione della Pace di Costanza', 84.

10. Falconi, 'La documentazione della Pace di Costanza', 84.

that the jurisdictional powers of the city officials ultimately derived from the emperor. Moreover, the Peace of Constance even contributed to bringing back a network of imperial representatives across the Po Valley, albeit not even remotely comparable to the one that had been introduced after Roncaglia.¹¹

3. The appellate jurisdiction and the Peace of Constance in legal works

The imperial effort to retain a foothold in the appellate jurisdiction matched the portrayal of the emperor as supreme judge found in the *Corpus Iuris Civilis* as well as in the legal works produced in the first quarter of the 13th century.¹² A very good example of this comes from the *Summa* on Justinian's *Code* produced in around 1210 by Azo of Bologna, who was probably the leading jurist of his generation. In it Azo clearly pointed to the hierarchical features of the appellate jurisdiction (*appellatio debet fieri ad superiorem*) by describing an ascending progression of judicial authorities at the top of which was the emperor himself.¹³ Various leading jurists before him, from Giovanni Bassianus (who died just before the end of the 12th century) to Pillius († c. 1207), had already discussed how to prepare for a *sententia appellationis per imperatorem* and various issues related to it such as whether all parties had to attend the hearing and how to deal with delays, including those caused by the emperor himself.¹⁴

Another particularly interesting testimony is found in the works of Boncompagno da Signa. He was a rhetorician, not a lawyer, but was very close to the schools of law (he wrote the preface to Azo's *Summa*, among others).¹⁵ Moreover, his works focused on practical concerns rather than theory, and thus probably better reflected the situation outside the academic world. In his *Rhetorica Antiqua*, for example (which he read publicly to the members of the law schools of Bologna and Padua in 1215 and 1226 respectively), Boncompagno explicitly portrayed the Holy Roman Emperor as the supreme judge, and attributed to him the prerogative of hearing appeals.¹⁶ In

11. For this network: Ficker, *Forschungen*; Haverkamp, *Herrschaftsformen*.

12. For the *Corpus Iuris Civilis*: *Digest*, 49.1-13; *Codex*, 7.62-70; Padoa Schioppa, *Ricerche sull'appello nel diritto intermedio* 1, 1-42; 2, 112-13, 191-95.

13. *Azonis Summa super Codicem* (Torino: 1966, facsimile reproduction of the edition edited at Lyon in 1506), 289; on Azo: P. Fiorelli, 'Azzone', in *Dizionario biografico degli Italiani* 4 (Rome: 1962), 774-81.

14. Padoa Schioppa, *Ricerche sull'appello nel diritto intermedio* 2, 191.

15. V. Pini, 'Boncompagno da Signa', in *Dizionario biografico degli Italiani* 11 (Rome: 1969), 721-25.

16. 'Boncompagnus' (Medieval Diplomatic and the *ars dictandi*, ed. S. Wight). <http://scrineum.unipv.it/wight/index.htm> (accessed on September 30, 2012), 4.4.22-24. 4-6.13.

the *Rhetorica Novissima*, a work on forensic oratory published at Bologna in 1235, his discussion of how to address imperial judges holding appellate jurisdiction described them as lanterns projecting the imperial majesty, rectifiers of mistakes made by others, champions of justice and safe havens for the powerless.¹⁷

Although Boncompagno and Azo did not specifically link the imperial prerogatives over the appellate jurisdiction to the Peace of Constance, this connection was made by the Bolognese jurist Odofredus, who graduated in the 1220s and died in 1265.¹⁸ This reference does not appear in the apparatus of glosses on the Peace of Constance that he produced between 1235 and 1250, which did not examine the passage concerning the appellate jurisdiction.¹⁹ Rather, it is found in a passage of Odofredus' Roman law lectures, where he included the imperial prerogative over the appellate jurisdiction in the list of what every city owed to the emperor according to the Peace of Constance.²⁰ In the same passage, however, Odofredus also pointed out that 'today' those residual imperial prerogatives were totally disregarded.²¹ The dating of Odofredus' lectures is not clear. He might have made that comment during the conflict fought between the so-called Second Lombard League and Frederick II (that is, between 1226 and 1250). In that period, however, imperial prerogatives were probably disregarded only by

17. 'Rhetorica Novissima' (Medieval Diplomatic and the *ars dictandi*, ed. S. Wight). <http://scrineum.unipv.it/wight/index.htm> (accessed at September 30, 2012), 5.4.7: 'Tres exordiorum varietates quibus uti possumus coram iudicibus imperialis aule. Ex auctoritate imperiali estis imperialis aule iudices constituti, ut sitis provisores causarum et aliorum errores iusto iudicio corrigatis. Quare ad vos, tamquam ad securum portum recurro ... Cum sitis imperatorie maiestatis candelabra et inextinguibilia luminaria, decet vos ferre opem contra iustitiam pregravatis et impotentium causas diligenter audire. Ad vos ergo recurrimus, supplicantes ... Quia maiestas imperialis de sapientia et industria vestra confidit, ideo vos preelegit ad corrigendum omnium et singulorum errores. Unde tam in causis appellationibus quam in gravaminibus contra formam iuris illatis ad examen vestrum fit tamquam ad portum salutis recursus'. Odofredus, *Lectura super Digesto Veteri* (Lyon: 1550), I, 41A. On his life and works: E. Spagnesi, 'Denari, Odofredo', in *Dizionario biografico degli italiani* 38 (Rome: 1990), 700-05.
19. M. Ascheri, 'La pace di Costanza da Odofredo a Baldo e oltre', in M. Ascheri et al. (ed.), *Ins Wasser geworfen und Ozeane durchquert. Festschrift für Knut Wolfgang Nörr* (Köln: 2003), 1-9; G. Dolezalek, 'I commentari di Odofredo e Baldo alla Pace di Costanza', in *La Pace di Costanza (1183). Un difficile equilibrio di poteri fra società italiana ed impero* (Bologna: 1984), 59-76 now expanded in 'Der Friede von Konstanz 1183 in der Literatur des «Jus Commune»', in Dilcher & Quadiglioni (ed.), *Gli inizi del diritto pubblico europeo, II. Da Federico I a Federico II*, 277-306.
20. Odofredus, *Lectura super Digesto Veteri*, I, p. 41A: 'Ita imperator tunc subiecit se iurisdictioni rectorum societatis lombardie et ipsi ordinauerunt ita et sepe iam legi illam pacem quod ipse deberet habere a qualibet civitate ... item ordinauerunt, quod de causis ultra L libras deberet appellari apud eum ... tamen hodie nihil habet'.
21. Odofredus, *Lectura super Digesto Veteri* (Lyon: 1550), I, 41A.

the members of the League, rather than the whole of northern Italy.²² Boncompagno's *Rhetorica Novissima*, for example, was published almost ten years into that conflict. Indeed, unlike his grandfather, Frederick II never experienced a general collapse of the Lombard pro-imperial front. He also knew very well his prerogatives regarding the appellate jurisdiction, which, from around the time of his coronation in 1220, he strived to uphold or which he granted to his supporters.²³ Therefore it is more likely that Odofredus was referring to the power vacuum that followed Frederick's death in 1250.

Most notably, the Peace of Constance fed back into the world of learned law, where, in discussions of the administration of justice, it was often cited as the source of the legitimacy of the city authorities. One of the earliest leading jurists to mention it in that connection was the Bolognese Johannes Bassianus. In his *Summa* on Justinian's *Novels*, while examining the office of the *defensor civitatis* (the Roman magistrate whom the jurists of this period equated with the podestà, who had recently replaced the city consuls), Bassianus noted that Barbarossa granted those of Lombardy the *merum imperium* (jurisdiction over criminal matters), while all the others simply usurped it.²⁴ This clearly referred to the Peace of Constance, which was the only grant of its kind encompassing the Lombard cities collectively. There was a very strong link between the work of Bassianus and that of the above-mentioned Azo (who was Bassianus' pupil), so much so that sometimes it is difficult to tell their works apart.²⁵ Azo himself clearly referred to the Peace of Constance in a *quaestio* in which he pointed out that in his time the *deportatio* (that is, the banishment of a person condemned for a crime) and the *bonorum ademptio* (the confiscation of property as an act of punishment), both of which were features of Roman law, were legally acceptable sentences in the whole of Lombardy because of an imperial grant.²⁶

In his works Azo also mentioned the activity of consuls and podestà as appellate judges.²⁷ The subject features as well in the formularies of a

22. G. Chiodi, 'Istituzioni e attività della seconda Lega Lombarda (1226-1235)', in *Studi di storia del diritto* (Milano: 1996), 79-262; Zorzi, 'La giustizia imperiale nell'Italia comunale'.
23. Zorzi, 'La giustizia imperiale nell'Italia comunale'; M. Ascheri & T. Szabó, 'Giudici, Regno d'Italia', in *Federiciana*, [http://www.treccani.it/enciclopedia/regno-d-italia-giudici_\(Federiciana\)/](http://www.treccani.it/enciclopedia/regno-d-italia-giudici_(Federiciana)/) (accessed on October 23, 2012). See also: S. Menzinger, *Giuristi e politica nei comuni di popolo: Siena, Perugia e Bologna, tre governi a confronto* (Rome: 2006).
24. Joannis Bassianus, *Summa in libro Novellarum, Collatio tertia*, in *Azonis Summa super Codicem*: 'Hodie autem per Imperatorem Federicum datur defensoribus civitatum Lombardiae etiam merum imperium, et ab omnibus aliis est usurpatum'.
25. U. Gualazzini, 'Bassiano (Bosiano, Bossiano, Boxiano) Giovanni', in *Dizionario Biografico degli italiani* 7 (Rome: 1970), 140-42; Fiorelli, 'Azzone'.
26. *Azonis quaestiones*, ed. E. Landsberg (Freiburg: 1888), 67-68.
27. *Azonis Summa super Codicem*, 288.

treatise on notarial practice written in the 1220s or early 1230s by the Bolognese Ranieri da Perugia, whose practical concerns resembled those set out in Boncompagno's works.²⁸ Unfortunately Azo and Ranieri did not specify the monetary value of these causes involving the appellate jurisdiction. Yet the legitimacy of consuls and podestà in that field clearly derived from the same source as their general judicial powers. Indeed, the link between the Peace of Constance and the *merum et mixtum imperium* (jurisdiction over civil as well as criminal matters) of consuls and podestà was a topos of 13th-century legal literature, because it can also be found in the works of the leading lawyers of the following generation. It features, for example, in what became the *glossa ordinaria* on the *Corpus Iuris Civilis*, which Accursius produced in the 1220s, where he mentioned the Peace of Constance while commenting upon the same passage of Justinian's *Novels* as had Basianus.²⁹ The same argument can also be found in Odofredus' lectures.³⁰ The city communes widely accepted this view as well, as attested by the *Liber consuetudinum Mediolani* of 1216, which talks of *plena iurisdictio*, as well as by the widespread inclusion, often in a very prominent position, of the text of the Peace of Constance in the *libri iurium* of the cities produced in the first half of the 13th century. This included the *liber iurium* of Bologna, which was produced in the 1220s by a commission led by the above-mentioned Ranieri da Perugia.³¹

The testimony of Odofredus' lectures is particularly significant regarding the end of the practical effectiveness of the residual imperial prerogatives, including that concerning appeals, but the validity of the theoretical framework established by the Peace of Constance carried on for centuries. While the Peace of Constance continued to be included in the *libri iurium* of the cities, starting from the 13th century it also began to feature (sometimes together with Odofredus' apparatus of glosses) among the *extravagantes* of the *Libri Feudorum*; in the later Middle Ages it was even incorporated in the printed editions of the *Corpus Iuris Civilis*, among its medieval additions. Thus countless jurists mentioned or commented upon it through the centuries.³² In the 16th century, for example, Jean Bodin referred to the

28. *Die Ars notariae des Rainerius Perusinus*, ed. L. Wahrmund (Innsbruck: 1917), 159. For analysis of the passage: Padoa Schioppa, *Ricerche sull'appello nel diritto intermedio*, 110-11.
29. *Accursii glossa in Volumen* (Venice: 1489), *Collatio tertia*, 24. On his life and works: P. Fiorelli, 'Accorso', in *Dizionario biografico degli italiani* 1 (Rome: 1960), 116-21.
30. Odofredus Denari, *Lectura super Digesto Veteri* I, 40B.
31. *Liber consuetudinum Mediolani anni MCCXVI*, ed. F. Berlan (Milano: 1866), 41; G. Raccagni, 'Il diritto pubblico, la Pace di Costanza e i *libri iurium* dei comuni', in Dilcher & Quadiglione (ed.), *Gli inizi del diritto pubblico europeo, II. Da Federico I a Federico II.*, 309-39.
32. Again, there is a vast literature, and only the latest will be mentioned here: Ascheri, 'La pace di Costanza da Odofredo a Baldo e oltre'; G.J.W. Black, *Absolutism in Renaissance Milan: Plenitude of power and the Visconti and the Sforza 1329-1535*

residual imperial prerogatives listed in the Peace of Constance, and specifically to the right to appoint judges (and thus to the appellate jurisdiction in particular), in order to call attention to the imperial sovereignty over northern Italy.³³

4. The legacy of the Peace of Constance in practice: the Paduan dispute of 1211-1212

Whereas undoubtedly the emperors put into practice their prerogative over the appellate jurisdiction in the decades after the Peace of Constance, two stages can be identified in the period between the reigns of Barbarossa and Frederick II. The first encompassed the remaining years of the reign of Barbarossa himself and the reign of his son Henry VI, when the terms of the settlement were reasonably well respected, including those regarding the appellate jurisdiction.³⁴ On Henry's death in 1197, however, a long struggle for the imperial crown ensued between his bloodline (first Henry's brother, Philip of Swabia, and then Henry's son, Frederick II) and Otto of Brunswick. Overall, the struggle lasted until Otto's death in 1218 and Frederick's imperial coronation in 1220. The state of turmoil it caused is vividly captured in an exchange of letters included in Boncompagno's *Rhetorica Antiqua*, in which the citizens of Pisa complain to an unnamed emperor about the *excessus Italicorum* that had followed the death of Henry VI: 'faith is lost, justice is abandoned, the just and the upright transgress, power alone has dominion', lament the Pisans, and only the emperor, who holds the reins of the law, can successfully intervene to restore justice and defend the weak. Churches, hospitals, widows, orphans, and more generally all those who crave peace are waiting for him to come, while bullies, kidnappers, and petty thieves are afraid of the imperial majesty and of its punishment.³⁵ The unnamed emperor replies, promising to intervene.³⁶ He was

- (Oxford: 2009), 54, 57-58, 71, 200; F. Cengarle, *Immagine di potere e prassi di governo. La politica feudale di Filippo Maria Visconti* (Rome: 2006), 65-73; Dolezalek, 'Der Friede von Konstanz 1183 in der Literatur des «Jus Commune»'; Raccagni, 'Il diritto pubblico, la Pace di Costanza e i libri *iurium* dei comuni'.
33. J. Bodin, *Les six livres de la République* (Lyon: 1579), 128.
34. Biscaro, 'Gli appelli ai giudici imperiali'; Ficker, *Forschungen* II, 60-66.
35. Boncompagno, *Rhetorica Antiqua*, 4.5.9: 'Significant imperatori Pisani excessus Ytalicorum, et contra plurimos invehuntur ... Ecce post decessum magnifice memorie imperatoris H. fremuerunt gentes et populi meditati sunt inania, dicentes: Faciamus de voluntate legem et de furore decretum; auferamus nobis iuga maiorum, que sunt importabilia sine dubio ad ferendum, et quisque nostrum deserviat voluptati. ... Quid plura? Fides perit, iustitia deseritur, iustus et rectus peccant, sola potentia dominatur. Ad vos demum, qui Romanum imperium optinetis ac limina iuris quolibet moderamini, clamat urbs Pisana, ut quamcitius veniatis ad iustitie federa conservanda et removenda onera impotentum. Prestolantur siquidem adventum invictissimi triumphatoris ecclesie, domus hospitales, vidue ac orphani et omnes, qui cupiunt desid-

probably Otto of Brunswick, whom Pisa supported against Frederick II.³⁷ Otto was crowned emperor in 1209 (after the death of Philip of Swabia) and briefly renewed the imperial presence in northern Italy. Then, from 1211, it was the turn of Frederick II to challenge Otto, and after 1212 they mainly fought one another in Germany. Frederick (who was born and bred in Sicily and was a teenager when he challenged Otto) visited northern Italy only very briefly during his first voyage to Germany in 1212 and then for his coronation in 1220. When he properly cast his eyes upon it in 1226, the conflict with a freshly renewed Lombard League began.

A very good example of Otto's involvement in Italy comes from 1211-1212, towards the end of his brief rule in northern Italy, when he found himself involved in a Paduan dispute that required his attention several times. It was a legal battle over the tithes of the nearby *villa* of Gorgo, fought between the cathedral canons of Padua and a prominent local family, the Zoppelli. The case was first submitted to the local authorities, and a judge of the podestà of Padua ruled in favour of the canons at the beginning of August 1211. His sentence was soon overturned by Alberto Baone, a very prominent local figure (writing many decades later, Rolandino of Padua described him as '*virus clarissimus et potens*' as well as '*virus famosissimus et preclarus*'), who claimed to act on behalf of the emperor (*ex parte domini Otonis dei gratia imperatoris*, or as *legatus domini imperatoris*).³⁸ The dispute, however, did not end there. In the middle of August 1211, the canons challenged Baone by communicating with Emperor Otto directly, helped by the very same judge of the Paduan podestà who had delivered the original sentence in their favour – which perhaps suggests that at that stage the podestà was on their side.³⁹ The canons questioned the existence of Baone's imperial mandate, which he had refused to display, and underlined his personal involvement in the case (during the original trial the Zoppelli had stated that they held the tithes of the *villa* of Gorgo as a fief from Baone himself). At a later stage of the dispute they also pointed out that Baone had been banned by the Commune of Padua.⁴⁰

erata pace gaudere. Illi vero, qui de potentia sua confidunt, cunctique raptores et latrunculi maiestatem imperatoriam contremiscunt, credentes quod in illos debeat extendere gladium ultionis'.

36. Boncompagno, *Rhetorica Antiqua*, 4.5.10.

37. D. Abulafia, *Frederick II. A medieval emperor* (Oxford: 1988), 115.

38. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 7. Rolandino da Padova, *Vita e morte di Ezzelino da Romano*, ed. and transl. F. Fiorese (Rome: 2004), 44, 298.

39. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 4.

40. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 9; Padua, Archivio Capitolare, Canonici, II, n. 274. Many of the records of the dispute have been edited in the documentary appendix of E. Zorzi, 'Il territorio padovano nel periodo di trapasso da comitato a comune. Studio storico con documenti inediti', *Miscellanea di Storia Veneta*, serie IV, 3 (1930), 290-96; the arguments of the canons against Alberto Baone can be found at p. 294.

Otto took heed of the canons' complaint and entrusted the matter to two new judges at the beginning of September.⁴¹ By October 1211 they had already annulled Baone's sentence and taken the case into their own hands.⁴² However, this move was opposed by the Zoppelli as well as, perhaps more surprisingly, by the podestà of Padua. The Zoppelli appealed to a statute of the Lombard League that forbade taking challenges directly to the emperor against sentences issued by local imperial judges who held appellate jurisdiction.⁴³ In turn, the canons not only denied the existence of such a statute; they also argued that, in any case, as was known to all, the Lombard League had been dissolved and its statutes were no longer in force, despite persistent pressures from Lombardy '*pro sotietate facienda [sic]*'. Finally they also pointed out that, in any case, the alleged statute was contradicted 'on a daily basis'.⁴⁴ Thus the canons appealed to the podestà not to obstruct the work of the two new imperial judges, both in the name of justice and 'in order not to cause a scandal'.⁴⁵

At this point the situation seems to have stalled. The Zoppelli refused to answer the calls of the new imperial judges, whose work the podestà of Padua also obstructed. The canons appealed once again to Otto, and he sent instructions to Padua that were publicly read in the cathedral at the beginning of January 1212. In them the emperor confirmed the annulment of Baone's sentence, re-endorsed the mandate of the new judges, and ordered

41. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 8.

42. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 15.

43. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 9; Zorzi, 'Il territorio padovano', 295-96: 'Dominus Basilius et Nicolaus Egidii de Wito, delegati iudices a domino imperatore, non possunt cognoscere de causa... et hoc ideo dicitur ex parte ipsius Iohannis [Zoppelli] et eius filii quando dicunt quod apud Mantuam olim statutum fuit inter lombardos, quod si iudex in aliqua civitate per imperatorem datus ad cognoscendum de causis appellationum sententiam dederit, ab illa sententia non deberet appellari ad imperatorem'.

44. Zorzi, 'Il territorio padovano', 295-96: 'Ad quod respondent canonici dicentes quod statutum illud nunquam factum fuit, nec exstat, nec constat aliquo modo fuisse factum, quare dicto Iohannis Zopelli tam simplicissimo non est ullo modo credendum. Item ex parte canonicorum respondetur quod si constaret sine prejudicio statutum tale factum fuisse, non nocet canonicis, nec debet interdici per potestatem Padue ne dominus Basilius et Nicolaus procedant et quare quia sotietas illa lombardorum, que tunc erat, sicut omnibus notum est, confracta est et dissoluta, unde hodie nullis vinculis, nullis pactis lombardorum sotietas est alligata, imo catene omnes que tunc erant inter eos, dissipate sunt. Quod est verissimum quod lombardi cottidie veniunt in civitate ista pro sotietate facienda. Preterea canonici aliter respondent quod etsi illud statutum, quod negatur, factum fuisset, non noceret quominus Basilius et Nicolaus cognoscere deberent cum contradicto iudicio in paduano districtu iudices ab imperatore delegati cottidie cognoscant et cottidie appellatur a iudice dato ab imperatore ad imperatorem et ipse causas postea committit et diffiniuntur a delegatis iudicibus et sententiantur ... Unde ... paduanam potestatem rogamus quatinus propter deum et honorem suum et propter iustitiam, non interdicat prefatis Basilio et Nicholao, a domino imperatore iudicibus delegatis, processum cause set permittat eos libere procedere, ita quod scandalum exinde non generetur'.

45. Zorzi, 'Il territorio padovano', 295-96.

the podestà to stop getting in their way.⁴⁶ The Zoppelli seemed to be ready to accept a compromise, agreeing to submit to Otto's judges, but asking for the appointment of new ones. The emperor complied at the end of January, mentioning in his mandate to the new judges the podestà's opposition to their predecessors.⁴⁷ On April 9, however, the podestà of Padua prohibited the canons from presenting their case to any judge who was not delegated by the city government.⁴⁸ The last evidence available for the case is a series of frustrated remarks by the canons' representative.⁴⁹

5. Contextualising the Paduan dispute

This case throws light in several directions, but, first of all, it shows how the emperor and his judges were still considered to be appropriate recipients of appeals against the sentences of local magistrates. This is particularly evident from the remarks of the canons concerning the frequency and regularity of the imperial appellate judges' activity, when they stated how the alleged statute of the League was contradicted on a daily basis. Admittedly, Otto's brief period of reign, his presence in Italy at that time, and his willingness to get involved probably strengthened the availability of that option. Indeed, there is evidence of Otto's interventions, and of the working of his judges, elsewhere. On October 7, 1212, for example, he appointed two appellate judges in Milan.⁵⁰ No trace survives of their activity, but Milan remained one of the leading Italian supporters of Otto until his death. Otto had also many supporters in Tuscany, where in San Miniato, the traditional centre of the imperial administration in that region, imperial representatives still judged appeals on his behalf in 1212-1213.⁵¹ Otto's interventions, which took place halfway between the death of Henry VI and the coronation of Frederick II, therefore provided a significant break in the power vacuum caused by the struggle for the crown.

On the other hand, the Paduan dispute also clearly shows how the city republics could try to take control of the whole appellate jurisdiction, to the point of defying imperial interventions openly, and the long instability caused by the struggle for the imperial crown certainly emboldened them. As we shall see, Otto's fortune was on the decline, and the Paduan podestà was probably taking advantage of this when he imposed upon the canons the

46. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 4, 12; *Acta Imperii selecta*, ed. J.F. Böhmer & J. Ficker (Innsbruck: 1870), 229-30.

47. Padua, Archivio Capitolare, Villarum, V, Gorgo, n. 18.

48. P. Kehr, 'Ein unbekanntes Mandat Ottos IV.', *Quellen und Forschungen aus Italienischen Archiven und Bibliotheken* 18 (1926), 335-36.

49. Kehr, 'Ein unbekanntes Mandat', 335-36.

50. *Acta Imperii*, 232: they were Guglielmo da Pusterla and Manfredo de Osa.

51. R. Davidsohn, *Storia di Firenze* (Firenze: 1973), II, 55.

requirement to submit their case only to a judge delegated by the city government. Indeed, given the canons' testimony as to the consistent imperial presence in this field, the Paduan case could be showing us the moment of transition between imperial and local control over the appellate jurisdiction. After all, the judge of the podestà initially supported the plea of the canons to Otto. Yet in the available secondary literature it has been possible to find references only to very few other cases in which imperial prerogatives in this field were clearly usurped.⁵² Besides, we do not know whether the imposition of the Paduan podestà really led to the appointment of a judge who only responded to the city commune.

In reality the cities had long tended to exert some degree of control over the whole appellate jurisdiction, as can be seen from the negotiations that had led to the Peace of Constance. That settlement recognised the imperial prerogative over cases worth more than twenty-five imperial *lire*, but it also specified that they were to be judged according to local laws and customs and by imperial representatives in the cities or dioceses where the cases took place.⁵³ In this respect, the emperor had gained ground in the course of the negotiations: in the spring of 1183 a much higher threshold had been considered, that is, one hundred imperial *lire*, as well as the involvement of the city communes in the selection of the judges.⁵⁴ Not only was that threshold drastically reduced, but the involvement of the city communes in the selection of judges did not make it to the final draft of the Peace of Constance either.

This does not mean that there was no such involvement in practice, however. For the sake of reaching a compromise (and of saving appearances), many other points raised in the negotiations did not survive to the final version but by and large were accepted informally. One of them concerned the anti-imperial functions of the Lombard League itself, for example.⁵⁵ It is interesting to note, in fact, that the imperial representatives deciding appeals after the Peace of Constance were often members of the local elite, including former consuls or podestà of the city in which they operated.⁵⁶

52. Zorzi, 'La giustizia imperiale nell'Italia comunale', 90.

53. Falconi, 'La documentazione della Pace di Costanza', 84: 'In causis appellationum si quantitas xxv libras imperialium excesserit, appellatio ad nos fiat, salvo iure et moribus Brixiensis ecclesie in appellationibus, ita tamen ut non cogantur in Alamanniam ire; sed nos habebimus proprium nuntium in civitate vel episcopatu, qui de ipsa appellatione cognoscat et iuret, quod bona fide causas examinabit et diffinit et secundum mores et leges illius civitatis'.

54. Falconi, 'La documentazione della Pace di Costanza', 51: 'In causis appellationum, si quantitas c librarum imperialium excesserit, appellatio ad imperatorem licite fiat, ita tamen quod non cogatur in Alamanniam ire. Sed imperator habeat proprium nuncium in civitate vel episcopatu, consilio consulum civitatis electum, qui de ipsa appellatione infra civitatem illam vel episcopatum cognoscat et diffiniat'.

55. Raccagni, 'Il diritto pubblico, la Pace di Costanza e i *libri iurium* dei comuni'.

56. Biscaro, 'Gli appelli ai giudici imperiali', 217.

This was the case with the two judges that Otto appointed in Milan in 1212, but also with Alberto Baone, who had been podestà of Padua in 1204.⁵⁷ The Paduan canons argued that Baone had recently been banned from the city, thus implying that he had lost the connection with, and the confidence of, the local authorities.

It is more difficult to trace the background of the two new sets of judges to whom Otto entrusted the Paduan case after he rejected Baone. None of them was a former consul or podestà. Yet there is evidence of local judges bearing the same names as those of the first pair – that is, Basilio and Nicolaus – the first of whom belonged to a prominent local family related to the even more prominent da Limena house.⁵⁸ I had no such luck in finding information about the second pair of judges, Gumberto *iudex Sancti Caesarii* and Bonito *miles de Barbarano*, whom Otto later appointed to satisfy the request of the Zoppelli, but the toponyms linked to their names do not seem to be Paduan ones. ‘Barbarano’ possibly referred to a locality between Padua and Vicenza, but much closer to the latter and belonging in this period to the bishop of that city.⁵⁹ Clearly none of them satisfied the local Paduan authorities. Could their rejection by the city authorities be the result of a disagreement concerning the choice of the judges? We will return to the local political situation later.

The Peace of Constance also failed to mention what to do when challenges were brought against the sentences of the imperial appellate judges. In reality, it ascribed to the emperor himself the appellate jurisdiction for the cases worth more than twenty-five imperial *lire*, and described the local imperial judges as *nuntii* appointed as a convenience for the appellants, so that they did not need to travel to Germany when the emperor was beyond the Alps (as was usually the case).⁶⁰ From this it could be gathered that the emperor had the last word over matters regarding the activity of his representatives, which, again, would be confirmed by the remarks of the canons in the Paduan case. Alas, it has not been possible to find any other challenge leading to the replacement of an appellate judge. Yet there is evidence of emperors defending the sentences of appellate judges in the last two decades of the 12th century.⁶¹

57. *Liber Regiminum Padue*, in *Antiquitates Italicae Medii Aevi* IV, ed. L.A. Muratori (Milano: 1741), 1125. The two Milanese judges had also been podestà of their city in 1204: *Gli atti del Comune di Milano fino all'anno MCCXVI*, ed. C. Manaresi (Milano: 1919), 556.

58. G. Rippe, *Padoue et son contado (Xe-XIIIe siècle): société et pouvoirs* (Rome: 2003), 204, 373, 879, 938; Archivio di Stato di Venezia, Mensa Patriarcale, Monastero di Murano, b. 113, cat. R, n. 967.

59. E. Reato, E. Garon & A. Girardi (ed.), *Barbarano vicentino: territorio, civiltà e immagini* (Vicenza: 1999), 248-51.

60. Falconi, ‘La documentazione della Pace di Costanza’, 84.

61. Biscaro, ‘Gli appelli ai giudici imperiali’, 228-29.

This brings us to the alleged statute of the Lombard League forbidding the involvement of the emperor in those cases. No other trace of it survives, but most of the evidence concerning the activity of the League is now lost. Given the role that the League had had in the making of the Peace of Constance, it is not implausible to suggest that its members might have discussed issues related to the appellate jurisdiction in one of the assemblies of the League held after 1183. According to the Zoppelli, the League issued the statute at Mantua, but they did not specify when. It is interesting to note that the League held an assembly at Mantua in 1196, which was attended by representatives of several cities from across northern Italy. Of its proceedings, only the record of the judgment by the rectors of the League in a border dispute between two cities survives, and it concerned Padua, which lost the dispute against Vicenza. However, this was probably not the only item on the agenda. Perhaps the statute to which the Zoppelli alluded also emerged from that meeting.⁶²

As we have seen, the canons' representative utterly denied the existence of any such statute of the League, further strengthening his argument by adding that, in any case, the League itself had been dismantled and thus its statutes were no longer binding. This is another extraordinary testimony in itself. Scholarship has long highlighted the decline and disappearance of the League after the Peace of Constance. Until now, however, that argument has been based on the waning traces of its activity, not on positive evidence such as that offered by the Paduan canons. Their representative even stressed that the situation was well known.

Scholars, however, have generally underestimated the endurance of the League, whose activity can be continuously traced to at least as late as 1199.⁶³ The canons' agent himself underestimated it, because in fact there was a renewal of the oath of association of the League in 1208.⁶⁴ Padua was not represented at that meeting, but a reserve of fealty to the League found in a treaty between Padua and Treviso from 1209 suggests that at least one of these cities had subsequently joined the oath.⁶⁵ Yet, above all, the canons' representative also seems to have partially contradicted himself when he mentioned that incessant requests came to Padua from Lombardy *pro sotietate facienda*. This might refer to attempts to convince Padua to join the oath of 1208. Similar pressures are reported for the city of Brescia, but these date to just before the oath of 1208, not three years after it.⁶⁶ Therefore, the canons' representative might have been referring to negotiations concerning an entirely new renewal of the oath of the League, of

62. Raccagni, *The Lombard League*, 164-65.

63. Raccagni, *The Lombard League*, 164-65.

64. Raccagni, *The Lombard League*, 171-98.

65. L. Bailo, *La lega difensiva fra Padova e Treviso* (Treviso: 1888).

66. Raccagni, *The Lombard League*, 174, 186-89.

which no other trace survives. Such scarcity of evidence is not inconceivable. Only one copy of the oath of 1208 survives, thanks to its inclusion in the 14th-century *liber iurium* of Vercelli, while the only other evidence concerning it is the passage from the contemporary chronicle reporting the diplomatic pressures on Brescia.⁶⁷ Previous renewals of the oath of association of the League, such as those of 1185, 1195 and 1198, were totally ignored by the chronicles, and are only attested by a handful of later copies of their records.⁶⁸ These renewals served to strengthen the bond between the cities and broadcast it in times of need. The renewal of 1198 coincided with the beginning of the struggle for the imperial crown between Otto of Brunswick and Philip of Swabia, and in 1208 Philip of Swabia was about to be crowned emperor.⁶⁹ The Paduan dispute was surrounded by events of similar magnitude, including Otto's coronation, his excommunication by Pope Innocent III, and the launching of Frederick's challenge against Otto, while other leagues were formed or confirmed in that period. In any case, the negotiations mentioned by the canons' representative probably had little or no success, since no other trace of the League can be found until its further renewal in 1226.⁷⁰

These wider developments certainly influenced the Paduan dispute, even if its surviving proceedings do not mention them. It should be noted, in fact, that during the Paduan dispute Otto was under papal excommunication (from November 18, 1210), which released his subjects from their fealty to him and suspended him from his office, at least in theory. Otto was also starting to face the challenge of Frederick II, although at that time Frederick was probably not yet a viable alternative. In autumn 1211, however, a group of German and Italian princes and cities, with the support of Pope Innocent III, offered Frederick the crown in place of Otto. Frederick reached Germany from southern Italy only in September 1212. Here he was crowned king (and thus emperor-elect) by his supporters. When Otto sent his final instructions to the podestà of Padua at the beginning of 1212, he had just aborted an invasion of central and southern Italy and was going back to Germany to face that challenge. Thereafter, the struggle was fought beyond the Alps. Otto never relinquished his imperial claims before his death in May 1218. Frederick was finally crowned emperor in Rome only in 1220.

In light of Otto's excommunication by the Pope, it is quite surprising that the Paduan canons appealed to him in the first place. At the same

67. Raccagni, *The Lombard League*, 80.

68. Raccagni, 'Il diritto pubblico, la Pace di Costanza e i *libri iurium* dei comuni', 5.

69. Raccagni, *The Lombard League*, 171-98.

70. On the struggle for the imperial crown: E. Boshof, 'Innozenz III. und der deutsche Thronstreit', in T. Frenz (ed.), *Papst Innozenz III. Weichensteller der Geschichte Europas* (Stuttgart: 2000), 51-67; B.U. Hucker, *Kaiser Otto IV.* (Hannover: 1990); Stürner, *Friedrich II.*; E. Winkelmann, *Philipp von Schwaben und Otto IV. von Braunschweig*, II, *Kaiser Otto IV. von Braunschweig 1208-1218* (Leipzig: 1878).

time, there is no evidence of the Papacy engaging with the dispute. Moreover, given Otto's weakness and delegitimisation, the podestà of Padua had little to fear by disregarding and obstructing his instructions. Indeed, Otto's excommunication might have had something to do with the local rejection of his judges.

How Padua fit into these developments is not so easy to establish, however. Both Otto and Frederick enjoyed the support of opposing coalitions of northern Italian cities and lords, although the composition and aims of these factions transcended that conflict and were rooted in regional politics.⁷¹ Each of the two contenders for the imperial crown duly condemned the supporters of the other by placing a ban upon them.⁷² Yet Padua did not feature in the lists of the recipients of these bans. This might suggest that it had not fully taken sides (which in turn might be the reason of the above-mentioned pressures from Lombardy *pro sotietate facienda*).

On the other hand, the place of origin of the podestà is often a good indication (albeit certainly not a guarantee) of the attitude and policy of the city that appointed him. The podestà of Padua in the years 1211 and 1212 were respectively citizens of Bergamo and Cremona, both of which supported Frederick II (Cremona was one of his leading supporters), as they had previously supported his uncle Philip against Otto.⁷³ A good example of the role played in similar circumstances by a podestà brought in from outside the city comes from the diplomatic pressures placed upon Brescia to join the renewal of the Lombard League, whose members supported Otto, in 1208. In that case the podestà of Brescia was also a Cremonese citizen, and he tried very hard, but in vain, to prevent Brescia from joining the League; this led to his expulsion, the exile of the Brescian citizens who supported him, and open warfare between Brescia and Cremona.⁷⁴

The recipients of Otto's ban, however, included a powerful ally of Cremona, the Marquis Azo VI of Este, and this had a direct bearing on the working of the appellate jurisdiction in Padua. As the head of the House of Este, Azo was one of the most powerful figures in what is now Veneto and its bordering areas, but he was also extremely well connected with the Papacy and with the leading German families (he was even Otto's relative).⁷⁵ Previous emperors had also granted the Este the prerogative to judge appeals in the cities of the March of Verona, which included Padua.⁷⁶ The Este often entrusted cases to delegates, but Azo's predecessor, Obizzo, had

71. Raccagni, *The Lombard League*, 171-98.

72. *Acta Imperii selecta*, 636-37; *Iohannis Codagnelli Annales*, ed. O. Holder-Hegger (Hannover & Leipzig: 1901), 43-45.

73. *Liber Regiminum Padue*, c. 369.

74. Raccagni, *The Lombard League*, 174, 186-89.

75. T. Dean, 'Este, Azzo (Azzolino) d'', in *Dizionario biografico degli italiani* 43 (Rome: 1993), 324-26.

76. Ficker, *Forschungen*, 63-64.

personally judged an appeal at Padua in 1186 that involved the canons themselves.⁷⁷ The House of Este still enjoyed that prerogative in the first quarter of the 13th century, when Philip of Swabia and then Frederick II (and not Otto IV) confirmed it, but around that period it was rejected by the Commune of Padua, which was intermittently at war with the Este for most of the first quarter of the century.⁷⁸ Indeed, Azo was also at the centre of a network of alliances that reached the peak of its power during the Paduan dispute, when it controlled various cities in or around the March of Verona, but not Padua.⁷⁹ This was not for lack of trying, however, as can be seen from not only the frequent armed clashes of this period, but even the Paduan destruction of the castle of Este in October 1213. By the time of the Paduan dispute examined here, Azo was the recipient of both a ban issued by the Commune of Padua, and one issued by Emperor Otto that, in common with all imperial bans, was intended to suspend all the imperial privileges enjoyed by its recipient.⁸⁰ Yet the relationship between Azo and the emperor had already passed the breaking point well before that. Azo probably had taken sides with Innocent III not long after he had excommunicated Otto; and, just a few months before the ruling of the dispute between the Zoppelli and the canons, he had expelled from Ferrara (another city included in his area of influence) the leaders of his local opponents and the vicar placed there by Otto.⁸¹

In the light of the prerogative of the Este over the appellate jurisdiction in Padua, it is probably safe to suggest that Alberto Baone judged appeals there as Azo's delegate, even if this is not specified in the surviving evidence. Alberto certainly belonged to the network of Azo's allies, where he enjoyed a prominent position. Between their families there was an old alliance, and a feudal relationship too, in the sense that the Baone held lands and castles in fief from the Este; in turn Alberto Baone acted as *curator* of Aldrovandino of Este (Azo's first son, who took over the leadership of the house after Azo's death in 1212), and then as *tutor* of Aldrovandino's son Azzolino, before Baone himself died in 1213.⁸² It is also interesting to note that Conselve, which was the main dwelling of Alberto's family, lies between Padua and the Castle of Este, and is not far from them. In turn, the *villa* Gorgo, which was at the centre of the dispute between the canons and

77. L.A. Muratori, *Antiquitates Italicae Medii Aevi* IV (Milano: 1741), 477-80.

78. Ficker, *Forschungen*, 63-64; S. Bortolami, 'Fra *'alte domus'* e *'populares homines'*. Il comune di Padova e il suo sviluppo prima di Ezzelino', in A. Rigon (ed.), *Storia e cultura a Padova nell'età di Sant'Antonio* (Padova: 1985), 46.

79. Raccagni, *The Lombard League*, 184-85.

80. Bortolami, 'Fra *'alte domus'* e *'populares homines'*', 184-85; Dean, 'Este, Azzo (Azzolino). d''.

81. Winkelmann, *Philipp von Schwaben und Otto IV.*, 265.

82. On the House of Baone: Rippe, *Padoue et son contado*; Zorzi, 'Il territorio padovano', 102-41.

the Zoppelli, lies between Padua and Conselve. Alberto judged other appeals in Padua apart from the one concerning the *villa* of Gorgo, including a case in 1211 that involved the bishop.⁸³ This would confirm that he was not an *ad hoc* interloper. Indeed, the connection with Azo could help to explain why Alberto Baone was unwilling or unable to prove his mandate, but could especially explain why the canons appealed to Otto despite his excommunication, and why Otto was so eager to reject Baone.

Finally, as we have seen, the canons also argued that Alberto Baone had been banned by the Commune of Padua. It is probably not a coincidence that he shared that status with Azo of Este. Both, in fact, belonged to the older local aristocracy (the Baone were a branch of the family of the counts of Padua), which, as in many other cities in Communal Italy, came to clash with the *popolo* in the first quarter of the 13th century. The *popolo* represented sections of the local society hitherto excluded from government, such as artisans and traders, although some noble families often sided with it, or even led it against other factions. Where the *popolo* took power, it often sought to expand the rights and control of the city commune in various fields, including justice and taxation, especially to the detriment of the old aristocracy.⁸⁴ This was the case in Padua, which in this period was controlled by a popular faction that pursued this course.⁸⁵ The stance of the podestà regarding the appellate jurisdiction in the case here examined would fit very well into such a policy. In this respect, it is interesting to note that, as mentioned, one of the two judges initially appointed by Otto and rejected by the Commune of Padua, Basilius, was probably related to one of the families that belonged to the rural aristocracy, while the second pair of judges appointed by the emperor were probably outsiders. After all, the *iudices* usually belonged to the local aristocracy, they often had links with the imperial authority, and their relationship with popular regimes was not entirely unproblematic.⁸⁶

The Commune of Padua was still challenging the Este and their prerogative to judge appeals in the early 1220s, when Frederick II sided with the Este. In 1226, the Commune of Padua participated in the renewal of the Lombard League, becoming its leading member in the Northeast of Italy until imperial forces took the city in 1237. During the rest of Frederick's reign, an official who was at the same time city-podestà and imperial vicar ruled Padua, but in reality the city was under the control of one of the

83. Zorzi, 'Il territorio padovano', 132.

84. J. Koenig, *Il «popolo» dell'Italia del Nord nel XIII secolo* (Bologna: 1986); A. Poloni, *Potere al popolo. Conflitti sociali e lotte politiche nell'Italia comunale del Duecento* (Milano: 2010).

85. Bortolami, 'Fra *'alte domus'* e *'populares homines'*', 45-46.

86. Bortolami, 'Fra *'alte domus'* e *'populares homines'*', 36; J.-C. Maire Vigueur, 'Gli *iudices* nelle città comunali: identità culturale ed esperienze politiche', in P. Oubert & A. Paravicini Bagliani (ed.), *Federico II e le città italiane* (Palermo: 1994), 1161-76.

leading allies of Frederick II in the region, that is, Ezzelino da Romano, whose control continued for a while even after the death of the emperor himself in 1250.⁸⁷

6. Conclusions

The most direct conclusion that can be reached from this enquiry is that in the first quarter of the 13th century the imperial prerogatives over the appellate jurisdiction were generally recognised in, and reflected very well the attitude of, the world of learned law. Moreover, the emperor and his judges could still be considered viable options when appeals against the sentences of local magistrates were concerned. The legal works clearly show the enduring appeal of the legacy of the Peace of Constance, and were not necessarily the products of an ivory tower, given the growing diffusion of university education among the personnel of the city communes, and especially among judges and notaries. Likewise, in the Paduan dispute parties, the canons and eventually even the Zoppelli, agreed to submit the case to the judges appointed by Otto. The emperor himself, at least initially, availed himself of local judges to uphold his authority.

This is not to deny that there was an erosion of the imperial prerogatives in this period, and the proceedings of the Paduan case are probably an invaluable source displaying the moment of transition between imperial and local control over the appellate jurisdiction. At the same time, that erosion needs to be qualified. For, strictly speaking, in the case of the Paduan dispute the city authorities did not simply fill a vacuum, but directly challenged imperial instructions and obstructed the judges appointed by the emperor. The reasons behind such challenge could be numerous and diverse. The Paduan authorities were probably taking advantage of the general turmoil to increase their autonomy, but the case probably went beyond that and was heavily influenced by many other issues and power struggles as well, some of which were transient ones. Indeed, the hierarchical features of the appellate jurisdiction inextricably linked local and wider concerns to make a convoluted whole. In the case of the Paduan dispute included were elements that ranged from the struggle between the *popolo* and the older local elite, the vicissitudes of regional networks of various sizes, to the bid for the imperial crown itself and even the contest between Empire and Papacy.

87. Bortolami, 'Fra *'alte domus'* e *'populares homines'*'; S. Bortolami, '*Honor civitatis*'. *Società comunale ed esperienze di governo signorile nella Padova ezzeliniana*', in G. Cracco (ed.), *Nuovi studi ezzeliniani* (Roma: 1992), 161-239; G.M. Varanini, '*La Marca Trevigiana*', in Oubert & Paravicini Bagliani (ed.), *Federico II e le città italiane*, 48-64. For the administration of justice during the reign of Frederick II: Zorzi, '*La giustizia imperiale nell'Italia comunale*'.